

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Allen Windrim
Debtor

Fay Servicing, LLC as servicer for
Wilmington Trust, National
Association, not in its individual
capacity, but solely as Trustee for
MFRA Trust 2016-1

Movant

v.

Allen Windrim
William C. Miller - Trustee
Respondents

CASE NO.: 21-10888-mdc

CHAPTER 13

Judge: Magdeline D. Coleman

Hearing Date: September 7, 2021 at 10:30 am

Objection Deadline: August 24, 2021

**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

Fay Servicing, LLC as servicer for Wilmington Trust, National Association, not in its individual capacity, but solely as Trustee for MFRA Trust 2016-1 (together with any successor and/or assign, “Movant”) hereby moves this Court for an Order (i) pursuant to 11 U.S.C. § 362(d)(1), vacating the automatic stay to permit Movant to enforce its mortgage on the Debtor’s premises located at 2244 S 9th St, Philadelphia, PA 19148-3143 (the “Property”) and (ii) for such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

1. Movant is the holder of a Note executed by the Debtor, dated August 25, 2006, whereby the Debtor promised to repay \$172,000.00 plus interest to World Savings Bank, FSB (the “Original Lender”). To secure the repayment of the Note, the Debtor executed a Mortgage in favor of Original Lender, encumbering the Property, which was recorded in Recorder of Deeds

Office in Philadelphia County, Pennsylvania as Document ID#51524441. The Mortgage was ultimately assigned to Movant by an Assignment of Mortgage. A copy of the Note, Mortgage, and Assignment of Mortgage are attached hereto as **Exhibit A**.

2. A Petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor on April 2, 2021.

3. This Court has jurisdiction over this case and this motion pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue of this case and this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtor has failed to make current mortgage payments due to Movant under the terms of the Mortgage. As a result, the Mortgage remains post-petition due for May 1, 2021.

6. Pursuant to 11 U.S.C. §362 (d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

9. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due. *In Re Michael Lancelot Taylor*, 151 B.R. 646,648 (Bankr. E.D.N.Y. 1993).

10. Plaintiff incurred attorney’s fees in the amount of \$1,050.00 and filing costs of \$188.00 in connection with filing and prosecuting of this motion for relief and seeks recovery of those amounts in order to cure the post-petition default.

11. Since grounds exist to vacate the stay in Debtor’s case, Movant therefore requests that the automatic stay imposed under 11 U.S.C. § 362(a) be modified and terminated for cause to permit Movant to pursue its rights under the Mortgage and applicable law, including without

limitation, the commencement and consummation of a foreclosure action and/or eviction proceeding.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1); and for such other, further and different relief as to this Court may deem just, proper and equitable. In addition, Movant requests an Order allowing Movant to offer and provide Debtors with information regarding a potential Forbearance Agreement, short sale, deed in lieu, loan modification, Refinance Agreement, or other loan workout/loss mitigation agreement, and to enter into such agreement with the Debtor without further order of the court.

Dated: August 10, 2021

By: /s/Lorraine Gazzara Doyle
Lorraine Gazzara Doyle, Esq.
FRIEDMAN VARTOLO LLP
Attorneys for Movant
1325 Franklin Avenue, Suite 160
Garden City, New York 11530
T: (212) 471-5100
F: (212) 471-5150
Bankruptcy@FriedmanVartolo.com